

AMENDED IN SENATE MAY 21, 2002

AMENDED IN SENATE MAY 9, 2002

SENATE BILL

No. 1818

Introduced by Senator Romero

February 22, 2002

An act to add Section 3339 to the Civil Code, to add Chapter 7 (commencing with Section 830) to Title 10 of Part 2 of the Code of Civil Procedure, to add Chapter 17.3 (commencing with Section 7285) to Division 7 of Title 1 of the Government Code, to add Chapter 1 (commencing with Section 24000) to Division 20 of the Health and Safety Code, and to add Chapter 4 (commencing with Section 1400) to Division 4 of the Labor Code, relating to backpay, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1818, as amended, Romero. Backpay awards.

Existing Labor Code provisions grant employees the right to engage in union organizing activity and collective bargaining, among other things.

This bill would declare, among other things, that employers found violating state laws affecting state-regulated union activity or collective bargaining, among others, must be subjected to meaningful penalties that will create an effective disincentive to unlawful practices in the event that federal immigration law is held by a court to preempt an award of backpay under the Labor Code to an individual who is an alien not authorized for employment under federal law.

This bill would require a court, if it finds that any provision of the Labor Code relating to a backpay award is unconstitutional or

preempted because an individual against whom a violation was committed is an alien unauthorized for employment under federal law, to calculate the amount of the backpay award and levy it as a civil penalty against the offending employer. It would make the civil penalty assessed recoverable by the affected individual through a civil action or administrative proceeding.

This bill would provide that if a court finds that the above provisions allowing recovery of a civil penalty are unconstitutional or preempted, the civil penalty assessed against the employer shall be deposited into an account in the General Fund which is created by this bill, and would require that the moneys therein be used to pay for awards to qualifying individuals, subject to specified findings by, and under procedures to be established by regulation of, the Attorney General.

This bill would add similar provisions to the Civil Code, the Code of Civil Procedure, the Government Code, and the Health and Safety Code.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3339 is added to the Civil Code, to read:
- 2 3339. (a) The Legislature finds and declares that:
- 3 (1) All protections, rights, and remedies available under this
- 4 code, except any right to reinstatement or employment which is
- 5 barred by federal law, are available to all individuals who have
- 6 applied for employment, or who are or who have been employed,
- 7 in this state, regardless of immigration status, and that this is
- 8 declaratory of existing law.
- 9 (2) It is consistent with the long-standing public interest of the
- 10 state in promoting the well-being of its workers and ensuring full
- 11 enforcement of California labor and other laws, such as those
- 12 affecting state-regulated concerted or union activity or collective
- 13 bargaining, wages, hours, or working conditions, and
- 14 discrimination and retaliation protections, that employers found
- 15 violating those laws must be subjected to meaningful penalties that
- 16 will create an effective disincentive to unlawful practices even in
- 17 the event that federal immigration law is held by a court to operate



1 in a way that preempts an award of backpay under any section of
2 this code to an individual who is an alien not authorized for
3 employment under federal law.

4 (3) It is consistent with the long-standing exercise of the state's
5 police powers to ensure that employers who violate labor and
6 discrimination laws do not gain economic or other competitive
7 advantages over other employers as a result of their unfair and
8 unlawful business practices; that it is equally important that
9 remedies be provided to workers that mitigate the financial harm
10 suffered by employees who are retaliated against because they
11 promoted or cooperated in the enforcement of worker protection
12 laws; that the failure to provide these protections to unauthorized
13 aliens will promote the exploitation of all workers including
14 United States citizens; and it is therefore in the public interest, and
15 an appropriate exercise of the police powers of the state, to ensure
16 that a civil penalty be assessed against an employer for a violation
17 of these important laws, which shall not be a lesser amount than
18 any backpay award that would have been available to such an
19 unauthorized alien had he or she been determined to be eligible to
20 receive such an award.

21 (b) (1) If a court finds that application of any provision of this
22 code relating to a backpay award is unconstitutional or preempted
23 by other laws because the individual against whom a violation was
24 committed is an alien unauthorized for employment under federal
25 law, this section shall apply. This section is in addition to, and
26 separate from, any provision of this code that provides for an
27 award of backpay if a violation of any such provision is found to
28 have occurred. In the event that a court or administrative agency
29 holds that the individual against whom a violation was committed
30 is an alien unauthorized for employment under federal law and is
31 therefore not entitled to a backpay award, the court or
32 administrative agency shall, with respect to each such individual,
33 calculate the amount of the backpay award and levy it as a civil
34 penalty against the offending employer.

35 (2) The civil penalty assessed by this section shall be
36 recoverable by the affected individual through a civil action or an
37 administrative proceeding filed at any time before the expiration
38 of the statute of limitations otherwise applicable to the underlying
39 violation.

1 (c) (1) If a court finds that the provisions of paragraph (2) of
2 subdivision (b) are unconstitutional or preempted by other laws,
3 the civil penalty assessed against an employer pursuant to
4 paragraph (1) of subdivision (b) shall be deposited into the General
5 Fund in an account that is hereby created and named the
6 “Victimized Workers Civil Rights Enforcement Fund,” the
7 moneys in which shall be used to pay for awards to qualifying
8 individuals under procedures to be established by regulation of the
9 Attorney General. No individual may qualify for an award if the
10 Attorney General does not find that making the award furthers the
11 purposes of this section and promotes compliance with the state’s
12 civil rights laws.

13 (2) Any individual aggrieved by a violation of any provision of
14 this code for which an award of backpay is an available remedy,
15 but whose award of backpay has been eliminated or reduced as a
16 result of a decision by a court respecting the award or an amount
17 provided under paragraph (2) of subdivision (b), shall be entitled
18 to receive from the fund an amount equal to that award or penalty,
19 provided that funds are available from the account.

20 (d) For purposes of enforcing state labor and other laws, such
21 as those affecting state-regulated concerted or union activity or
22 collective bargaining, wages, hours, or working conditions, or
23 discrimination and retaliation, a person’s immigration status is
24 irrelevant on the issue of liability, and there shall be no inquiry into
25 a person’s immigration status until such time as a court or an
26 administrative agency is considering a remedy that includes
27 reinstatement or employment and the inquiry is clearly compelled
28 by other applicable law.

29 (e) The provisions of this section are severable. If any provision
30 of this section or its application is held invalid, that invalidity shall
31 not affect other provisions or applications that can be given effect
32 without the invalid provision or application.

33 SEC. 2. Chapter 7 (commencing with Section 830) is added
34 to Title 10 of Part 2 of the Code of Civil Procedure, to read:

35

36 CHAPTER 7. ACTIONS FOR BACKPAY

37

38 830. (a) The Legislature finds and declares that:

39 (1) All protections, rights, and remedies available under this
40 code, except any right to reinstatement or employment which is



1 barred by federal law, are available to all individuals who have
2 applied for employment, or who are or who have been employed,
3 in this state, regardless of immigration status, and that this is
4 declaratory of existing law.

5 (2) It is consistent with the long-standing public interest of the
6 state in promoting the well-being of its workers and ensuring full
7 enforcement of California labor and other laws, such as those
8 affecting state-regulated concerted or union activity or collective
9 bargaining, wages, hours, or working conditions, and
10 discrimination and retaliation protections, that employers found
11 violating those laws must be subjected to meaningful penalties that
12 will create an effective disincentive to unlawful practices even in
13 the event that federal immigration law is held by a court to operate
14 in a way that preempts an award of backpay under any section of
15 this code to an individual who is an alien not authorized for
16 employment under federal law.

17 (3) It is consistent with the long-standing exercise of the state's
18 police powers to ensure that employers who violate labor and
19 discrimination laws do not gain economic or other competitive
20 advantages over other employers as a result of their unfair and
21 unlawful business practices; that it is equally important that
22 remedies be provided to workers that mitigate the financial harm
23 suffered by employees who are retaliated against because they
24 promoted or cooperated in the enforcement of worker protection
25 laws; that the failure to provide these protections to unauthorized
26 aliens will promote the exploitation of all workers including
27 United States citizens; and it is therefore in the public interest, and
28 an appropriate exercise of the police powers of the state, to ensure
29 that a civil penalty be assessed against an employer for a violation
30 of these important laws, which shall not be a lesser amount than
31 any backpay award that would have been available to such an
32 unauthorized alien had he or she been determined to be eligible to
33 receive such an award.

34 (b) (1) If a court finds that application of any provision of this
35 code relating to a backpay award is unconstitutional or preempted
36 by other laws because the individual against whom a violation was
37 committed is an alien unauthorized for employment under federal
38 law, this section shall apply. This section is in addition to, and
39 separate from, any provision of this code that provides for an
40 award of backpay if a violation of any such provision is found to

1 have occurred. In the event that a court or administrative agency
2 holds that the individual against whom a violation was committed
3 is an alien unauthorized for employment under federal law and is
4 therefore not entitled to a backpay award, the court or
5 administrative agency shall, with respect to each such individual,
6 calculate the amount of the backpay award and levy it as a civil
7 penalty against the offending employer.

8 (2) The civil penalty assessed by this section shall be
9 recoverable by the affected individual through a civil action or an
10 administrative proceeding filed at any time before the expiration
11 of the statute of limitations otherwise applicable to the underlying
12 violation.

13 (c) (1) If a court finds that the provisions of paragraph (2) of
14 subdivision (b) are unconstitutional or preempted by other laws,
15 the civil penalty assessed against an employer pursuant to
16 paragraph (1) of subdivision (b) shall be deposited into the General
17 Fund in an account that is hereby created and named the
18 “Victimized Workers Employment-Related Enforcement Rights
19 Fund,” the moneys in which shall be used to pay for awards to
20 qualifying individuals under procedures to be established by
21 regulation of the Director of Industrial Relations. No individual
22 may qualify for an award if the director does not find that making
23 the award furthers the purposes of this section and promotes
24 compliance with the state’s employment-related laws.

25 (2) Any individual aggrieved by a violation of any provision of
26 this code for which an award of backpay is an available remedy,
27 but whose award of backpay has been eliminated or reduced as a
28 result of a decision by a court respecting the award or an amount
29 provided under paragraph (2) of subdivision (b), shall be entitled
30 to receive from the fund an amount equal to that award or penalty,
31 provided that funds are available from the account.

32 (d) For purposes of enforcing state labor and other laws, such
33 as those affecting state-regulated concerted or union activity or
34 collective bargaining, wages, hours, or working conditions, or
35 discrimination and retaliation, a person’s immigration status is
36 irrelevant on the issue of liability, and there shall be no inquiry into
37 a person’s immigration status until such time as a court or an
38 administrative agency is considering a remedy that includes
39 reinstatement or employment and the inquiry is clearly compelled
40 by other applicable law.

(e) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. Chapter 17.3 (commencing with Section 7285) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 17.3. BACKPAY AWARDS

7285. (a) The Legislature finds and declares that:

(1) All protections, rights, and remedies available under this code, except any right to reinstatement or employment which is barred by federal law, are available to all individuals who have applied for employment, or who are or who have been employed, in this state, regardless of immigration status, and that this is declaratory of existing law.

(2) It is consistent with the long-standing public interest of the state in promoting the well-being of its workers and ensuring full enforcement of California labor and other laws, such as those affecting state-regulated concerted or union activity or collective bargaining, wages, hours, or working conditions, discrimination and retaliation protections, that employers found violating those laws must be subjected to meaningful penalties that will create an effective disincentive to unlawful practices even in the event that federal immigration law is held by a court to operate in a way that preempts an award of backpay under any section of this code to an individual who is an alien not authorized for employment under federal law.

(3) It is consistent with the long-standing exercise of the state's police powers to ensure that employers who violate labor and discrimination laws do not gain economic or other competitive advantages over other employers as a result of their unfair and unlawful business practices; that it is equally important that remedies be provided to workers that mitigate the financial harm suffered by employees who are retaliated against because they promoted or cooperated in the enforcement of worker protection laws; that the failure to provide these protections to unauthorized aliens will promote the exploitation of all workers including United States citizens; and it is therefore in the public interest, and an appropriate exercise of the police powers of the state, to ensure

1 that a civil penalty be assessed against an employer for a violation
2 of these important laws, which shall not be a lesser amount than
3 any backpay award that would have been available to such an
4 unauthorized alien had he or she been determined to be eligible to
5 receive such an award.

6 (b) (1) If a court finds that application of any provision of this
7 code relating to a backpay award is unconstitutional or preempted
8 by other laws because the individual against whom a violation was
9 committed is an alien unauthorized for employment under federal
10 law, this section shall apply. This section is in addition to, and
11 separate from, any provision of this code that provides for an
12 award of backpay if a violation of any such provision is found to
13 have occurred. In the event that a court or administrative agency
14 holds that the individual against whom a violation was committed
15 is an alien unauthorized for employment under federal law and is
16 therefore not entitled to a backpay award, the court or
17 administrative agency shall, with respect to each such individual,
18 calculate the amount of the backpay award and levy it as a civil
19 penalty against the offending employer.

20 (2) The civil penalty assessed by this section shall be
21 recoverable by the affected individual through a civil action or an
22 administrative proceeding filed at any time before the expiration
23 of the statute of limitations otherwise applicable to the underlying
24 violation.

25 (c) (1) If a court finds that the provisions of paragraph (2) of
26 subdivision (b) are unconstitutional or preempted by other laws,
27 the civil penalty assessed against an employer pursuant to
28 paragraph (1) of subdivision (b) shall be deposited into the General
29 Fund in an account that is hereby created and named the
30 “Victimized Workers Fair Employment and Housing
31 Enforcement Rights Fund,” the moneys in which shall be used to
32 pay for awards to qualifying individuals under procedures to be
33 established by regulation of the Director of ~~Housing and~~
34 ~~Community Development~~ *Industrial Relations*. No individual
35 may qualify for an award if the director does not find that making
36 the award furthers the purposes of this section and promotes
37 compliance with the state’s fair employment and housing laws.

38 (2) Any individual aggrieved by a violation of any provision of
39 this code for which an award of backpay is an available remedy,
40 but whose award of backpay has been eliminated or reduced as a

1 result of a decision by a court respecting the award or an amount
2 provided under paragraph (2) of subdivision (b), shall be entitled
3 to receive from the fund an amount equal to that award or penalty,
4 provided that funds are available from the account.

5 (d) For purposes of enforcing state labor and other laws, such
6 as those affecting state-regulated concerted or union activity or
7 collective bargaining, wages, hours, or working conditions, or
8 discrimination and retaliation, a person's immigration status is
9 irrelevant on the issue of liability, and there shall be no inquiry into
10 a person's immigration status until such time as a court or an
11 administrative agency is considering a remedy that includes
12 reinstatement or employment and the inquiry is clearly compelled
13 by other applicable law.

14 (e) The provisions of this section are severable. If any provision
15 of this section or its application is held invalid, that invalidity shall
16 not affect other provisions or applications that can be given effect
17 without the invalid provision or application.

18 SEC. 4. Chapter 1 (commencing with Section 24000) is added
19 to Division 20 of the Health and Safety Code, to read:

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21 CHAPTER 1. BACKPAY AWARDS
22

23 24000. (a) The Legislature finds and declares that:

24 (1) All protections, rights, and remedies available under this
25 code, except any right to reinstatement or employment which is
26 barred by federal law, are available to all individuals who have
27 applied for employment, or who are or who have been employed,
28 in this state, regardless of immigration status, and that this is
29 declaratory of existing law.

30 (2) It is consistent with the long-standing public interest of the
31 state in promoting the well-being of its workers and ensuring full
32 enforcement of California labor and other laws, such as those
33 affecting state-regulated concerted or union activity or collective
34 bargaining, wages, hours, or working conditions, and
35 discrimination and retaliation protections, that employers found
36 violating those laws must be subjected to meaningful penalties that
37 will create an effective disincentive to unlawful practices even in
38 the event that federal immigration law is held by a court to operate
39 in a way that preempts an award of backpay under any section of

1 this code to an individual who is an alien not authorized for
2 employment under federal law.

3 (3) It is consistent with the long-standing exercise of the state's
4 police powers to ensure that employers who violate labor and
5 discrimination laws do not gain economic or other competitive
6 advantages over other employers as a result of their unfair and
7 unlawful business practices; that it is equally important that
8 remedies be provided to workers that mitigate the financial harm
9 suffered by employees who are retaliated against because they
10 promoted or cooperated in the enforcement of worker protection
11 laws; that the failure to provide these protections to unauthorized
12 aliens will promote the exploitation of all workers including
13 United States citizens; and it is therefore in the public interest, and
14 an appropriate exercise of the police powers of the state, to ensure
15 that a civil penalty be assessed against an employer for a violation
16 of these important laws, which shall not be a lesser amount than
17 any backpay award that would have been available to such an
18 unauthorized alien had he or she been determined to be eligible to
19 receive such an award.

20 (b) (1) If a court finds that application of any provision of this
21 code relating to a backpay award is unconstitutional or preempted
22 by other laws because the individual against whom a violation was
23 committed is an alien unauthorized for employment under federal
24 law, this section shall apply. This section is in addition to, and
25 separate from, any provision of this code that provides for an
26 award of back pay if a violation of any such provision is found to
27 have occurred. In the event that a court or administrative agency
28 holds that the individual against whom a violation was committed
29 is an alien unauthorized for employment under federal law and is
30 therefore not entitled to a backpay award, the court or
31 administrative agency shall, with respect to each such individual,
32 calculate the amount of the backpay award and levy it as a civil
33 penalty against the offending employer.

34 (2) The civil penalty assessed by this section shall be
35 recoverable by the affected individual through a civil action or an
36 administrative proceeding filed at any time before the expiration
37 of the statute of limitations otherwise applicable to the underlying
38 violation.

39 (c) (1) If a court finds that the provisions of paragraph (2) of
40 subdivision (b) are unconstitutional or preempted by other laws,

the civil penalty assessed against an employer pursuant to paragraph (1) of subdivision (b) shall be deposited into the General Fund in an account that is hereby created and named the “Victimized Workers Health and Safety Enforcement Rights Fund,” the moneys in which shall be used to pay for awards to qualifying individuals under procedures to be established by regulation of the Director of Industrial Relations. No individual may qualify for an award if the director does not find that making the award furthers the purposes of this section and promotes compliance with the state’s labor and health- and safety-related laws.

(2) Any individual aggrieved by a violation of any provision of this code for which an award of backpay is an available remedy, but whose award of backpay has been eliminated or reduced as a result of a decision by a court respecting the award or an amount provided under paragraph (2) of subdivision (b), shall be entitled to receive from the fund an amount equal to that award or penalty, provided that funds are available from the account.

(d) For purposes of enforcing state labor and other laws, such as those affecting state-regulated concerted or union activity or collective bargaining, wages, hours, or working conditions, or discrimination and retaliation, a person’s immigration status is irrelevant on the issue of liability, and there shall be no inquiry into a person’s immigration status until such time as a court or an administrative agency is considering a remedy that includes reinstatement or employment and the inquiry is clearly compelled by other applicable law.

(e) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5. Chapter 4 (commencing with Section 1400) is added to Division 4 of the Labor Code, to read:

CHAPTER 4. BACKPAY AWARDS

1400. (a) The Legislature finds and declares that:

(1) All protections, rights, and remedies available under this code, except any right to reinstatement or employment which is barred by federal law, are available to all individuals who have

1 applied for employment, or who are or who have been employed,
2 in this state, regardless of immigration status, and that this is
3 declaratory of existing law.

4 (2) It is consistent with the long-standing public interest of the
5 state in promoting the well-being of its workers and ensuring full
6 enforcement of California labor and other laws, such as those
7 affecting state-regulated concerted or union activity or collective
8 bargaining, wages, hours, or working conditions, and
9 discrimination and retaliation protections, that employers found
10 violating those laws must be subjected to meaningful penalties that
11 will create an effective disincentive to unlawful practices even in
12 the event that federal immigration law is held by a court to operate
13 in a way that preempts an award of backpay under any section of
14 this code to an individual who is an alien not authorized for
15 employment under federal law.

16 (3) It is consistent with the long-standing exercise of the state's
17 police powers to ensure that employers who violate labor and
18 discrimination laws do not gain economic or other competitive
19 advantages over other employers as a result of their unfair and
20 unlawful business practices; that it is equally important that
21 remedies be provided to workers that mitigate the financial harm
22 suffered by employees who are retaliated against because they
23 promoted or cooperated in the enforcement of worker protection
24 laws; that the failure to provide these protections to unauthorized
25 aliens will promote the exploitation of all workers including
26 United States citizens; and it is therefore in the public interest, and
27 an appropriate exercise of the police powers of the state, to ensure
28 that a civil penalty be assessed against an employer for a violation
29 of these important laws, which shall not be a lesser amount than
30 any backpay award that would have been available to such an
31 unauthorized alien had he or she been determined to be eligible to
32 receive such an award.

33 (b) (1) If a court finds that application of any provision of this
34 code relating to a backpay award is unconstitutional or preempted
35 by other laws because the individual against whom a violation was
36 committed is an alien unauthorized for employment under federal
37 law, this section shall apply. This section is in addition to, and
38 separate from, any provision of this code that provides for an
39 award of backpay if a violation of any such provision is found to
40 have occurred. In the event that a court or administrative agency



holds that the individual against whom a violation was committed is an alien unauthorized for employment under federal law and is therefore not entitled to a backpay award, the court or administrative agency shall, with respect to each such individual, calculate the amount of the backpay award and levy it as a civil penalty against the offending employer.

(2) The civil penalty assessed by this section shall be recoverable by the affected individual through a civil action or an administrative proceeding filed at any time before the expiration of the statute of limitations otherwise applicable to the underlying violation.

(c) (1) If a court finds that the provisions of paragraph (2) of subdivision (b) are unconstitutional or preempted by other laws, the civil penalty assessed against an employer pursuant to paragraph (1) of subdivision (b) shall be deposited into the General Fund in an account that is hereby created and named the “Victimized Workers Labor Rights Enforcement Fund,” the moneys in which shall be used to pay for awards to qualifying individuals under procedures to be established by regulation by the Director of Industrial Relations. No individual may qualify for an award if the director does not find that making the award furthers the purposes of this section and promotes compliance with the state’s labor laws.

(2) Any individual aggrieved by a violation of any provision of this code for which an award of backpay is an available remedy, but whose award of backpay has been eliminated or reduced as a result of a decision by a court respecting the award or an amount provided under paragraph (2) of subdivision (b), shall be entitled to receive from the fund an amount equal to that award or penalty, provided that funds are available from the account.

(d) For purposes of enforcing state labor and other laws, such as those affecting state-regulated concerted or union activity or collective bargaining, wages, hours, or working conditions, or discrimination and retaliation, a person’s immigration status is irrelevant on the issue of liability, and there shall be no inquiry into a person’s immigration status until such time as a court or an administrative agency is considering a remedy that includes reinstatement or employment and the inquiry is clearly compelled by other applicable law.

1 (e) The provisions of this section are severable. If any provision
2 of this section or its application is held invalid, that invalidity shall
3 not affect other provisions or applications that can be given effect
4 without the invalid provision or application.

5 SEC. 6. This act is an urgency statute necessary for the
6 immediate preservation of the public peace, health, or safety
7 within the meaning of Article IV of the Constitution and shall go
8 into immediate effect. The facts constituting the necessity are:

9 In order that California labor and other legal protections,
10 especially those relating to state-regulated concerted or union
11 activity or collective bargaining, wages, hours, and working
12 conditions, discrimination, and retaliation, remain fully effective,
13 it is necessary that this act take effect immediately.

